

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

**ASTORIA DOWNTOWN MARKET; and
SAMUEL MCDANIEL,**

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:18-cv-01367-AC

ORDER

Andrew Z. Tapp, Metropolitan Law Group, PLLC, 1971 West Lumsden Road, Unit 326, Brandon, Florida 33511-8820; Robert E. Repp, Post Office Box 148, Marylhurst, Oregon 97036. Attorneys for Plaintiffs.

Billy J. Williams, United States Attorney, and Alison Milne, Assistant United States Attorney, 1000 SW Third Avenue, Suite 600, Portland, Oregon 97204-2902. Attorneys for Defendant.

IMMERGUT, District Judge.

On December 16, 2019, Magistrate Judge John V. Acosta issued his Findings and Recommendation (F&R), recommending that this Court grant in part Plaintiffs' motion for summary judgment and deny Defendant's cross-motion for summary judgment. ECF 47. Judge Acosta further recommended that this Court vacate the decision at issue and remand this case for

further proceedings before the Food and Nutrition Service. *Id.* No party filed objections. Having reviewed the F&R and the parties' briefing, this Court adopts the F&R in full.

DISCUSSION

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, sua sponte" whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

Although no party filed objections, this Court has reviewed de novo the legal issues in the F&R, ECF 38, and adopts it in full. Plaintiffs' motion for summary judgment, ECF 33, is GRANTED IN PART and DENIED IN PART. Defendant's cross-motion for summary judgment, ECF 38, is DENIED. The Food and Nutrition Service's final decision, permanently denying Plaintiffs' application to participate as a SNAP retailer, is VACATED. This matter is REMANDED to the Food and Nutrition Service for further proceedings consistent with this order.

IT IS SO ORDERED.

DATED this 13th day of March, 2020.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge